HIGH COURT OF UTTARANCHAL AT NAINITAL

(Court's order whether the case is or not approved for reporting.)

(Chapter VIII Rule 32 (2)(b)

Description of the case.

WPMS No. 5804/01

Baba Kali Kamliwala & others

Vs.

Additional District Magistrate Dehradun & others

Approved for reporting.

Not approved for reporting

Date of decision 31.07.2006

Initial of Judge

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

WRIT PETITION No. 5804 (M/s) OF 2001

(Old No. 3956/92)

1. Baba Kali Kamliwala Panchayati Kshetra,
   Registered Society under the Societies Registration Act
   Having its Registered Officer, at 208, Mahatma Gandhi Road, Calcutta – 7 through its Secretary.
2. Sri P.L. Kedia, Honorary Secretary,
   Baba Kali Kamliwala Panchayati Kshetra,
   Rishikesh district Dehradun. .....Petitioners

Versus

1. Additional District Magistrate, Dehradun
2. M/s. Bharat Petroleum Corporation Ltd., ECE House, Connaught Circus, Post Box No.7, New Delhi through its Divisional Manager. ..... Respondents

Sri Munish Bhardwaj, Counsel for the petitioners
Standing Counsel for the respondent No.1
Sri J.C. Belwal, Counsel for the respondent no.2.

Dated: 31.07.2006

Hon'ble Rajesh Tandon, J.

Heard Sri Munish Bhardwaj, Counsel for the petitioner, Standing Counsel for the respondent No.1 and Sri J.C. Belwal, Counsel for the respondent No.2.

2. By the present writ petition, the petitioners have prayed for a writ of certiorari quashing the order dated 30.10.1991 (Annexure No. 7 to the writ petition) passed by the respondent no. 1.

3. Briefly stated, on 12.07.2001 petitioners executed a lease deed for a period of 10 yeas for the use of an open plot of land 80' x 60' feet on the Badrinath-Hardwar Road, Rishikesh in favour of the respondent no. 2 i.e. M/s. Burmah Shell Oil Storage and Distributing Co. of India Ltd. (now M/s. Bharat Petroleum Corporation Ltd.) at the rate of Rs. 450/- per month with liberty of making excavations for business and to construct or erect thereon

pre-fabricated but removable Sales room, Pumping, Planks and Accessories as may be required. It was also agreed between the parties that after the expiry of ten years period or on the determination of the lease at an earlier date, the demised premises would be delivered to the lessor.

4. The tenancy of the respondent no.2 was terminated vide notice dated 13.01.1983 and thereafter, petitioners filed a suit being Suit No.148 of 1983 in the Court of the Munsif, Dehradun seeking the relief of eviction stating therein that the respondent no.2 was no longer their tenant and he may be evicted from the premises in question measuring 80' x 60' situtate on the Badrinath Hardwar Road, Rishikesh and possession of the same should be delivered to them after removing the Pre-fabricated or the temporary structures.

5. Petitioners further submitted that while the Civil suit no.148 of 1973 was pending between the petitioners and the erstwhile tenant/respondent no.2, the respondent no.2 moved an application under section 29A of the U.P. Act No. XIII of 1972 before the Additional District Magistrate Dehradun for fixation of rent, even though, they grossly under valued the real value of the land. In this regard, petitioners filed the objections before the Additional District Magistrate, Dehradun categorically stating that the land in question was not subject to the provisions of the U.P. Act No.XIII of 1972 as the same was an open plot of land and could not be deemed to be a building within the meaning of Section 3 of the aforesaid Act.

6. Petitioners further submitted that the Additional District Magistrate, Dehradun had no jurisdiction to declare the rent under the provisions of U.P. Act No.XIII of 1972 as the suit being Suit No. 148 of 1983 for ejectment was pending in the court of the Munsif, Dehradun. Despite the fact that there was sufficient material before the learned Additional District Magistrate, he allowed the application filed by respondent no. 2 on 31.10.1991, though it was

not maintainable under the provision of Section 29-A of the U.P. Act No. 13 of 1972.

7. A perusal of the application, which has been registered as Case No. 4 of 1983, filed by the respondent no.2 shows that for fixing the rent, he has stated that the present market value of the constructions and installations is not less than Rs. 1,50,000/- and the market value of the land is Rs. 50,000/- at the rate of Rs. 24/- per sqft. and he requested to determine the rent in accordance with Section 29(A) of the U.P. Act No.XIII of 1972.

8. Against the aforesaid application, petitioners filed their objection stating therein that the market value of the land is not less than Rs.1,000/- per sq. meter and the value of the said plot is about Rs.5.00 lacs.

9. Prescribed Authority has allowed the application of the respondents and fixed the value of land to the extent of Rs. 13,377.00 per year of Rs. 1114.80 per month to be payable from 01.7.1981.

10. Aggrieved by the said order dated 31.10.1991, the petitioners have filed the present writ petition.

11. The Prescribed Authority has taken into the consideration the provisions of 29(A) of the U.P. Act No. XIII of 1972. The amount of rent has been fixed by the authorities under section 29(A) of the U.P. Act No.XIII of 1972.

12. In view of the above, I do not find any illegality in the impugned order as the rent was fixed w.e.f. 01.7.1981. However, Liberty is given to the respondent no.2 to pay the amount of rent to the petitioners in instalments in accordance with law.

13. Subject to the aforesaid observations, the writ petition is dismissed.

31.07.2006 **(Rajesh Tandon, J.)**
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